

### **DETAILED ACTION**

1. This communication is in response to the amendment filed May 27, 2008.

#### ***Status of Claims***

2. Claims 1-32 are as previously presented. Claims 1-32 are pending.

#### ***Claim Objections***

3. Claim 21 is objected to for a minor informality. The claim language can be improved upon to better claim machine/apparatus subject matter (vs. software). A suggestion would be for the preamble of the claim to recite: "A computer-readable medium embodied with software enabling dynamic pricing in an unbalanced market, the software when executed using one or more computers is operable to:" This claims the computer-readable medium.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 11-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites the phrase "the electronic marketplace" in lines 4 and 6. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

Claims 12-20 are rejected to because of their dependency on claim 11.

***Claim Rejections - 35 USC § 101***

**6.** 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-10 and 21-32 were rejected under 35 U.S.C. § 101 in the Office Action filed February 26, 2008 because the claimed invention is directed to non-statutory subject matter. The rejections of claims 21-30 are withdrawn. However, the grounds for rejection of claims 1-10 and 31-32 still stands.

***Allowable Subject Matter***

**7.** Claims 1-10 and 21-32 are rejected under 35 U.S.C. § 101, but could be allowed if placed unambiguously within a statutory category.

Claims 11-20 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The following is an examiner's statement of reasons for allowance:

The closest prior art of record, Heimermann et al., Pub. No. 2002/0143692, discloses an electronic marketplace for dynamic pricing in an unbalanced market, the electronic marketplace (Abstract and ¶0068) comprising:

- a first side of the unbalanced market comprising a plurality of market participants coupled with the electronic marketplace (e.g. requisiteness; ¶0158-0159);

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- a second side of the unbalanced market comprising a plurality of market participants coupled with the electronic marketplace (e.g. suppliers; ¶¶0070, ¶¶0160-0161, ¶¶0165 and ¶¶0279-0280),
- each market participant associated with the first side of the unbalanced market having a larger market capacity than each market participant associated with a second side of the unbalanced market and each market participant associated with the second side of the unbalanced market having a smaller-capacity than each market participant associated with the first side of the unbalanced market (e.g. consortium vs. individual suppliers; ¶¶0080, ¶¶0161 and ¶¶0165);
- one or more computers collectively supporting the unbalanced market (¶¶0068, ¶¶0070 and ¶¶0159), the one or more computers collectively operable to:
- receive offers from one or more market participants associated with the first side of the unbalanced market and from one or more market participants associated with the second side of the unbalanced market (¶¶0161).

Neither Heimermann or any other prior art of record, alone or in combination with Heimermann discloses or teaches the above limitations, in addition to the following limitations:

- each offer comprising at least an offered price and an offered quantity;

- prioritize among any offers associated with the first side of the unbalanced market that comprise equal offered prices and among any offers associated with the second side of the unbalanced market that comprise equal offered prices according to a predetermined prioritization scheme, the prioritization among such equally priced offers determining the order in which they are matched with other offers;
- match a first offer associated with the first side of the unbalanced market with a second offer associated with the second side of the unbalanced market according to a relationship between a first offered price associated with the first offer and a second offered price associated with the second offer; and
- determine a strike price for the match between the first offer and the second offer based on the relationship between the first and second offered prices.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- (a) Huberman Pat No. 6,078,906: "... in a sealed-bid second-price auction, no bidder knows the value of any bid other than its own..." (col. 10, lines 40-41).
- (b) Rackson et al. Pat. No. 6,415,270: "If more than one bid is detected with the same bid value such that a tie occurs, a priority scheme is used to determine which bid is the optimal bid." (col. 13, lines 8-15).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY JOHNSON whose telephone number is (571)272-2025. The examiner can normally be reached on Monday - Friday, 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ALEXANDER KALINOWSKI can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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